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I N D E X

1 MS. WALLEN: The next case before the Court is United
2 States of America versus George L. Eberle. It's docketed at
3 Criminal No. 05-26 Erie. Representing the Government is
4 Christian Trabold. Representing the Defendant is Thomas
5 Patton.

6 THE COURT: Mr. Eberle this is a hearing on the
7 Government's motion to keep you in jail before your trial.
8 They have the burden, so they go first. Mr. Trabold.

9 MR. TRABOLD: Well, Your Honor, I'll proceed with Mr.
10 Eberle's case in the same fashion I proceeded in
11 Mrs. Eberle's case by way of proffer. This is a presumption
12 case in light of the fact that the Eberles are charged with
13 2151 offense, as well as conspiracy to commit that offense,
14 as well as possession and receipt of child pornography
15 occurring in or around March of 2005.

16 THE COURT: 2251.

17 MR. TRABOLD: 2251, I apologize.

18 Given the nature and the circumstances of the crime
19 charged, that obviously is the first characteristic and a
20 factor that the Court's required to take into account in
21 this case in deciding separate and apart from the
22 presumption whether there are conditions that can be
23 fashioned, conditions to assure the Court that Mr. Eberle is
24 not a danger to the community or is not a flight risk.

25 In this case, obviously, the nature and the

1 circumstances of the crime charged are extremely significant
2 and represent a clear and present danger to the community,
3 so much so that in the limited class of crimes that give
4 rise to the presumption, this case is one of those limited
5 class of charges.

6 With regard to the weight of the evidence, the child
7 pornography that makes up the charges, Count No. 3 and 4 of
8 the indictment, was found on the Eberle's computer. It was
9 found under circumstances when the Government knows the
10 Eberles have been accessing the computer inside their
11 residence.

12 With regard to the charges in Count Nos. 1 and 2, the
13 victim has come forward and indicated that she is the minor
14 depicted in the images that were found located at George
15 Eberle's Yahoo e-mail address. Mr. Eberle, when questioned,
16 admitted that the images complained of by Yahoo and
17 ultimately reported by the National Center for Missing and
18 Exploited Children, those images were, in fact, on his
19 computer, or more specifically could be located at his Yahoo
20 e-mail account. However, he denies that they were images of
21 the victim and he indicated that they were images of an
22 18-year-old by the name of Bree.

23 Additionally, Your Honor, during the course of a phone
24 conversation, the victim's mother in this case, overheard
25 Alesha Eberle discussing that she wanted -- she and George

1 wanted to make another video of the victim similar to the
2 video that they made of the victim that forms the -- partly
3 forms the basis at Count No. 1 of the indictment because the
4 earlier video that they had made had been destroyed.

5 With regard to the history and characteristics of the
6 Defendant, I went through a very lengthy list of things from
7 an OCY Court summary report dated in November of 2004. And
8 again, some of these instances go back and forth between
9 Alesha and George. And to the extent that any of these
10 things relate to Alesha, they don't have really any bearing
11 on George, but I'll include them all.

12 At the time the report was dated, the Eberle's children
13 were in OCY placement. The report indicates that Maverick
14 and Arthur, their two youngest children, the hygiene for
15 those children was not being consistently maintained. The
16 report indicates that the medications for Maverick Eberle
17 for asthma were not consistently maintained.

18 Arthur Eberle displayed consistent behavioral problems.
19 And I believe according to the OCY summary, Arthur Eberle
20 would be the child that at the time covered by the report
21 was living with George Eberle. Arthur Eberle displayed
22 consistent behavioral problems inside and outside of school.
23 And at the time, he was in kindergarten and his needs with
24 respect to his hyperactivity problems were not properly
25 addressed.

1 The Eberles, both Alesha and George, were referred to
2 the agency in December of 2004 due to a multiplicity of
3 various concerns, including domestic violence, lack of
4 parenting skills, and George and Alesha's mental health
5 concerns, which are significant and which are related in the
6 Pretrial Services' report as well.

7 Additionally, the report indicates that at the time the
8 Eberles had difficulty finding and maintaining appropriate
9 housing. Specifically, with regard to domestic violence,
10 the OCY report indicates that in the two years prior -- or
11 covered prior to November of 2004, the Eberles had the Corry
12 Police at their residence 67 times for reports of domestic
13 violence. And in almost every one of those 67 times, at
14 least some of the children were present and witnessed the
15 alleged acts of domestic violence.

16 And what's the date of time when this occurred?

17 The two years prior to the report. The report
18 indicates that -- uses the phrase "over the past two years",
19 so that would be the two years prior to November of 2004.

20 With regard to Mr. Eberle's, George Eberle's, mental
21 health status, the report indicates -- and really, I think,
22 it's consistent with what's in the Pretrial Services report
23 that he suffers from bipolar disorder, anxiety disorder,
24 adult ADHD, and some depression-type illness.

25 The report further characterizes, they were -- as part

1 of their involvement with OCY, the Eberles were ordered to
2 attend Corry Counseling Services and comply with the
3 requirements obviously placed upon them as part of their
4 aftercare. The report characterizes their participation
5 with Corry Counseling Services as inconsistent and sporadic.

6 Further, the report indicates that the Eberle's failed
7 to comply with the recommendations of the agency with regard
8 to their family service plan, which was one of the
9 components of their involvement with OCY. Arthur Eberle,
10 who at the time was in kindergarten and, I believe, six
11 years of age for the time period covered by the report, the
12 report indicates that he missed the last two and a half
13 months of kindergarten, which, I guess, would have been the
14 school year covering 2003 and 2004. And as a result of
15 that, he had to repeat kindergarten.

16 Perhaps most significantly in the OCY report, the
17 report indicates under the safety assessment section that
18 the caseworkers believed that the children would not be safe
19 if they returned to the home at that time, which, again,
20 would have been November of 2004.

21 Additionally, there's information from the foster
22 mother, who at that time Arthur Eberle was living with, who
23 indicated to OCY her belief, the foster mother's belief,
24 that Arthur Eberle was too educated with regard to things of
25 a sexual nature. That Arthur Eberle discussed the sexual

1 behaviors of his parents, that Arthur Eberle would openly
2 masturbate saying that his father taught him the right way
3 to do it, that the child indicated that George Eberle
4 would -- had on occasion masturbated in front of the child.

5 Additionally, the child discusses viewing pornographic
6 material. Openly discusses that and does not recognize,
7 according to the foster mother, that this material is for
8 adults.

9 That would all, Your Honor, be under the subheading of
10 the history and characteristics of this Defendant. It also
11 leads into the nature and seriousness of the danger that Mr.
12 Eberle is to anyone in the community by virtue of the fact
13 that the OCY summary is relevant to your consideration here
14 because it indicates a pattern of inability to abide by
15 requirements placed upon Mr. Eberle by those folks that are
16 placing the requirements upon him.

17 And for all those reasons, including the reason in the
18 Pretrial Services' report -- and I would just note for the
19 record -- it's already part of the record, but the Pretrial
20 Services' report recommends, for a variety of reasons, that
21 Mr. Eberle be detained. And the Government would concur
22 with that recommendation and ask that you detain Mr. Eberle
23 based on the proffer -- with regard to the charges, the
24 proffer, with regard to the weight of the evidence against
25 Mr. Eberle.

1 And again, Your Honor, I don't know if I mentioned it,
2 Mr. Eberle still has pending charges in the Court of Common
3 Pleas of Erie County relating to the sexual assault-type
4 offenses on the victim, who at the time was 12. Those
5 offenses are not going to be withdrawn by the Erie County
6 DA's office. And the only offenses that are here are the
7 child pornography type related of offenses. And those
8 offenses, the child pornography-related offenses, will be
9 withdrawn by the Erie County DA's office. So essentially,
10 the case is going to be split in half. Thank you.

11 THE COURT: Mr. Patton.

12 MR. PATTON: Your Honor, Mr. Eberle's mother is on her
13 way. I just got a note handed to me and she is roughly 15
14 minutes away. I will proceed with a proffer.

15 Basically, the information that's in the Pretrial
16 Services' report as indicated, officers from Pretrial
17 Services were able to interview Mr. Eberle's mother and
18 found her to be a suitable third-party custodial candidate.

19 There were some other concerns that led them to make
20 their recommendation as to detention, but their
21 investigation found Mr. Eberle's mother to be -- whose name
22 is Bev Nichols, N-I-C-H-O-L-S, to be an appropriate
23 third-party custodian.

24 So we will proceed with that as being our proffer as to
25 conditions. And on top of that we'd have argument as well.

1 Do you have any knowledge of the stability of the phone
2 line?

3 Yes. She is working on getting a phone line. And we
4 understand that until she gets a working phone in her house,
5 that would impact whether or not she is an acceptable --
6 well, she's certainly an acceptable third-party custodian,
7 but as to whether or not Pretrial Services or this Court
8 would be comfortable in allowing Mr. Eberle to go to the
9 house.

10 So our position on that would be that you can make a
11 finding that he be released into her custody, but on the
12 condition that that not occur until a phone is operable in
13 the house -- a land-line phone operable, so that electronic
14 monitoring can be performed over the phone line.

15 THE COURT: Okay. Is that it?

16 MR. PATTON: Yes. As far as argument, I would like to
17 address the proffer offered by the Government today and
18 discuss the conditions that are set forth in the Bail Reform
19 Act that you have to consider.

20 THE COURT: Okay.

21 MR. PATTON: Your Honor, as far as the nature and
22 circumstances of the offenses charged, the offenses are of a
23 sexual nature dealing with children, but as far as the
24 weight of the evidence, you know very little about the
25 weight of the evidence. And as far as the conspiracy charge

1 and the charge that I basically refer to as manufacturing
2 child pornography, the alleged videotaping of, or taking
3 pictures of intercourse, apparently is based on the
4 statements of a victim who waited some three to four years
5 before making any claims that she was somehow abused.

6 The offenses in Count No. 1 and 2 that deal with the
7 12-year-old alleged victim are alleged to have occurred from
8 August of 2001 until and around September 2001. Now, we
9 don't have any information about the exact dates when this
10 victim supposedly came forward, but obviously this didn't --
11 she didn't come forward in 2001 or these charges would have
12 happened then.

13 So there is reason to question the weight of the
14 evidence here. We don't know, you know, that somebody is
15 what they're represented in pictures that were found on a
16 Yahoo site. You don't know whether or not on the pictures
17 themselves what portion of the people involved are visible
18 so that -- you know, whether or not faces are even visible
19 or not. And you don't know about any type of further
20 investigation regarding any steps the police may have taken
21 to try and confirm the victim's claim that she is the
22 individual represented in these images.

23 Now, based on the indictment, you can find that there's
24 probable cause to believe that these events occurred, but
25 that is separate from your deciding what is the weight of

1 evidence against Mr. Eberle. And Mr. Eberle has given
2 statements to the police specifically denying that the
3 alleged victim is the person depicted in those images.

4 There is a proffer that the victim's mother, at some
5 point in time, although we don't know when, overheard -- or
6 claimed to overhear part of a telephone conversation between
7 the victim and Alesha Eberle. We don't know what end of the
8 conversation that mother was listening -- supposed to be
9 listening in on, whether it was the victim's end or on
10 Alesha's end.

11 And if she was listening on the victim's end, how she
12 would be in a position to hear what Alesha Eberle was
13 supposedly saying on the telephone. And so you just don't
14 have any evidence -- any details whatsoever to explain how
15 the victim's mother was supposedly able to hear statements
16 made by Alesha Eberle over the telephone. And if she was
17 told this by the victim after the phone call, you're now
18 dealing with two layers of hearsay.

19 And so I would submit that the very, very limited
20 information you have about this statement from the mother
21 does not add much to the weight of the evidence in this case
22 with regard to Counts 1 and 2.

23 With regard to Counts 3 and 4, the Government says,
24 well, we know that images of child pornography allegedly
25 found on the computer were put there at a time when the

1 Eberles, plural, had access to the computer. Obviously, if
2 two people have access to the same computer, one of the
3 individuals could be using the computer in an improper
4 manner to do improper things without the other individual
5 knowing about it.

6 And so the Government has presented very, very scant
7 evidence to you to establish that George Eberle knowingly
8 received or possessed the images of child pornography that
9 were allegedly found on the computer that was seized from he
10 and his wife's home because even under the Government's
11 version, both of them had access to the computer.

12 But I thought that he agreed that the images were on
13 his computer, he knew about them, but that he said they were
14 of an 18-year-old person.

15 That deals with the allegations of Count 1 and 2.
16 These are separate events, Your Honor. The images that form
17 the basis of Counts 1 and 2 were discovered -- were brought
18 to law enforcement's attention by Yahoo because they were
19 being stored on Yahoo's site, and those were posted up there
20 sometime in 2001 and 2002. But if you look at the dates
21 charged in Counts 3 and 4, the days are in March 2005.

22 And the conduct, as I understand it, and Mr. Trabold
23 can correct me if I'm wrong, is that the images that
24 support -- or purport to support the charges in Counts 3 and
25 4 are images that were found on a computer that was taken

1 from the Eberle home in and around March of 2005, a computer
2 that had been rented from RentWay.

3 And so inasmuch as Mr. Trabold stated in his proffer
4 that those images, the ones at issue in Counts 3 and 4, the
5 Government says based on, I assume, an examination of the
6 hard drive, that those images were placed on the hard drive
7 of the computer during a time when both George and Alesha
8 Eberle had access to the computer in their home.

9 And that being the case, there is -- while there may be
10 enough for a finding of probable cause as to George Eberle's
11 supposedly possessing those alleged images of child
12 pornography, the evidence that he was the person, that he
13 even knew they were there, is very, very weak because the
14 Government, itself, has told you in its proffer that Alesha
15 Eberle had access to the computer at the same time.

16 Okay.

17 So I would submit that the weight of the evidence in
18 this case on all four counts is not high.

19 With regards to the history and characteristics of the
20 person, I do not find in Section 3142 (g)(3) any statement
21 that the history and characteristics include the person's
22 parenting ability. OCY findings regarding whether or not
23 George Eberle has been a good parent to his children are
24 not -- don't impact whether or not he is a danger to the
25 community.

1 The fact that their hygiene may not have been good, the
2 fact that the one son may not have been getting his asthma
3 medication, the fact that the police were called to the
4 house numerous times for domestic violence, you can only
5 find a -- detain someone based on danger to the community if
6 you find that there's a danger that they will commit the
7 type of offense that would justify detention under the Bail
8 Reform Act and domestic abuse type of charges don't fall
9 into that category.

10 And in this case, Alesha Eberle has been ordered
11 detained. So she -- Mr. Eberle, if he's released on bond,
12 is not going to have direct contact with her. And under
13 the -- if Mr. Eberle is released on the condition that he
14 stay with his mother at her house in Corry, he is not going
15 to have any contact with Alesha, therefore, any concerns
16 that he is somehow a danger to her are alleviated. Any
17 concern that he is a danger to his children are alleviated
18 because OCY has custody of the children and he cannot have
19 contact with the children.

20 And therefore, the evidence concerning the OCY report,
21 you know, while it may be relevant to a determination in
22 Family Court as to whether or not the children should be
23 kept in foster care and whether or not Mr. Eberle's parental
24 rights may be looked at being terminated, they're not
25 particularly relevant here.

1 To the extent the Government wants to argue that the
2 compliance with OYC's family plan is some kind of an
3 indication to you as to how Mr. Eberle may comply with your
4 conditions here, I would submit that that is a poor analogy
5 that does not follow through or make sense when you
6 understand that OCY cannot -- has no authority to force
7 anyone to do anything.

8 OCY may be able to say, look, if you want your children
9 back, here's some things you need to do. And then a Judge
10 may look to see if there's been a follow up on the OCY plan
11 to make determinations about whether or not the Judge is
12 going to return children to the parents. But the OCY Family
13 Plan and recommendations do not carry the weight of law and
14 do not carry the weight of a court behind them, and not
15 following those conditions cannot result in someone being
16 arrested or placed in jail.

17 It's going to impact on whether or not they're going to
18 be reunited with their children, but it certainly is not
19 indicative of how someone who was placed on bond under
20 conditions is going to act under those conditions of bond
21 because they are apples and oranges.

22 Mr. Eberle's personal character and his physical and
23 mental condition; now his mental condition, there's
24 indications that he had been diagnosed with some mental
25 illnesses, but there is also an indication that he was

1 receiving treatment for those illnesses and was on
2 medication. And the Government -- neither the Government
3 nor the Pretrial Services' office has in any way said to you
4 or explained to you how these mental illnesses specifically
5 lead to a finding that somehow Mr. Eberle is a danger to the
6 community.

7 These are mental illnesses that millions of people deal
8 with on a day-to-day basis through medications and mental
9 health treatment. And to say that someone who is bipolar is
10 a danger to the community is quite frankly just a gross
11 oversimplification and generalization. Under that standard,
12 anyone who would come into this Court with some kind of
13 mental health diagnosis under the DSM4 ought be detained
14 because somehow that makes them a danger.

15 THE COURT: I think the concern here is how treatment
16 and travel to the Court is going to be had when his mother
17 didn't have the ability to access a car.

18 MR. PATTON: Well, if that's the issue, that's fine,
19 and we can address that. If the issue from the Government's
20 perspective is he's a danger because he has mental illness,
21 I think that's a different situation.

22 THE COURT: I hadn't heard that. All I heard about was
23 what's in the Pretrial Services' report. And in that
24 report, it just focuses on the fact that it's of concern if
25 not treated.

1 Okay. There's -- I would submit there is not any
2 evidence to support a finding that Mr. Eberle would not
3 receive -- continue to receive treatment or would not follow
4 through on any treatment recommended by Pretrial Services.

5 Mr. Eberle --

6 You're proffering that he will, in fact, continue to
7 receive treatment.

8 Yes.

9 Okay.

10 And I would submit, Your Honor, even if he would not
11 receive treatment, even if he would not take medications
12 that may be prescribed, that does not heed to the finding
13 that he is a danger.

14 It could.

15 It could if someone would present any evidence to you
16 that in Mr. Eberle's case that there are facts to support
17 such a finding, but no one has. And there are people who
18 are mentally ill, that have mental illnesses such as
19 depression or bipolar disorder, who choose to not medicate
20 and choose to try to treat themselves through either
21 counseling or just through behavior modification.

22 And Mr. Eberle, obviously, has strong family ties to
23 this area. His family is in Corry, his mother is there, and
24 he's welcome to be there. And he's not employed and he has
25 no financial resources. I'd say the financial resources

1 indicate the he certainly isn't a flight risk because he
2 doesn't have any money to go anywhere.

3 And as far as employment, I would suggest that if Your
4 Honor is going to release Mr. Eberle, that that release
5 would be to his mother's house with some type of home
6 confinement with electronic monitoring, which would make
7 employment kind of a moot point because he would not be able
8 to be employed if he was on house arrest with electronic
9 monitoring.

10 Can you answer the question about grandchildren or
11 other children who visit her.

12 Your Honor, I am not aware that there are any
13 grandchildren -- well, the grandchildren would be
14 Mr. Eberle's children. But since they are in foster homes,
15 there isn't any contact. And Your Honor can make it a
16 condition of the bond simply that no children or no one
17 under 18 be allowed to be in the home. No one who's under
18 18 lives there. And it could just simply be a straight-out
19 condition that no children under the age of 18 are allowed
20 to be there.

21 If Mrs. Eberle has other extended family that has
22 younger children that she wants to see, she would simply
23 have to go somewhere else to see them. I think that would
24 be an appropriate condition of bond given the nature of the
25 charges.

1 Mr. Eberle was not on any type of supervision at the
2 time this offense occurred. I have not seen any indication
3 that there's any history of failing to appear in court
4 proceedings. And there really is no prior record at all, at
5 least not listed in the Pretrial Services' report. And when
6 this case gets boiled down to its essence, it's Mr. Eberle
7 may present a danger to children. And so -- but the
8 Government has not indicated that there's any other type of
9 danger Mr. Eberle presents to the community other than he
10 should not have contact with children. And possibly they
11 could make an argument that he shouldn't have contact with
12 his wife based on the claims of domestic problems.

13 But those risks can be addressed through the conditions
14 of bond. As we've already stated, he's not going to be able
15 to have contact with his wife because his wife is detained
16 under order of this Court and, therefore, he physically just
17 will not have any contact with her. And Your Honor can
18 impose conditions such that Mr. Eberle will not have any
19 contact with children. And you can also say that he not
20 have any access to a computer, or certainly a computer that
21 has any type of Internet access.

22 And with those conditions, any risk to the community is
23 addressed. And I understand that the nature of these
24 charges are serious, and that there are offenses that if
25 they would be proven are viewed with particular scorn; but

1 the Bail Reform Act doesn't say, if you're charged with a
2 really nasty offense, you have to be detained. What it says
3 is you have to consider the nature of the charges, but if
4 there are conditions of release that can address any
5 possible danger or any possibility of failing to appear, you
6 have to release under those conditions.

7 And in this case, there are clearly conditions that can
8 address the concerns that are raised by the nature of these
9 charges.

10 THE COURT: Mr. Patton, your folks have arrived. If
11 you'd like to take a few minutes before I let Mr. Trabold
12 argue, go ahead.

13 (Brief recess taken.)

14 MR. PATTON: Thank you. Your Honor, Ms. Nichols has no
15 grandchildren, other than George's children. The only
16 contact she has had with George's children since he was
17 arrested was when Alesha was out on bond. They were allowed
18 to have visitations at Child Advocacy -- supervised
19 visitations through OCY. But since Alesha's incarceration,
20 there have been no visitations whatsoever.

21 THE COURT: Does she work during the day?

22 MR. PATTON: No, she does not. She's on disability.
23 They have a phone -- they have arranged to have a phone put
24 in the house that -- it has been told by Verizon the home
25 phone will be activated on Friday. We have the telephone

1 number that has been assigned to the home.

2 Right now it is set up so that there will be Internet
3 access when the phone is hooked up. The phone is being
4 hooked up in the name of Charles Nichols, who is Bev
5 Nichols' brother. He would have a computer in his room,
6 which is located in the basement of the house, which will
7 have a door on it. And that will be locked by Charles
8 Nichols and only accessible to Charles Nicols.

9 THE COURT: All right.

10 MR. PATTON: And, of course, Mr. Eberle has not yet
11 been able to satisfy the bond that has been set in State
12 court, so obviously would not be physically released even if
13 he's placed on bond by this Court unless and until he was
14 able to post the bond in State court.

15 THE COURT: Okay. Thank you. Mr. Trabold.

16 MR. TRABOLD: Your Honor, I have some -- I don't know
17 what the Court's intentions were with regard to issuing a
18 ruling immediately upon the close of the hearing, but I have
19 some cases that I'd like you to consider and I'd like to
20 discuss the rulings in some of these cases. Those cases are
21 two case in the 3rd Circuit, US versus Carbone and US versus
22 Perry. And I cite to those and I will provide copies of the
23 cases to the Court just because they reveal the general
24 standard in these detention hearings with regard to a
25 presumption and with regard to what your consideration needs

1 to be.

2 It's simply that in a case where there's a presumption,
3 the Defendant's burden is one of production to come forward
4 with some evidence to rebut the presumption. It is always
5 the Government's burden of proof of persuasion throughout.
6 However, if the Defendant does rebut the presumption, the
7 presumption is not removed entirely. It still remains there
8 for you to consider along the lines of for you to consider
9 that congress -- consider that said offenses give rise to
10 the presumption to be so serious and that the presumption is
11 there and that that is something that you should consider.
12 And I will provide you those 3rd Circuit cases just because
13 they enunciate that standard.

14 I'm also providing you a case from the 2nd Circuit,
15 United States versus Miguel Mercedes, 254 Fed. Cir. 433 from
16 2001 and United States versus Abad, A-B-A-D, from the 8th
17 Circuit in 2003, that's at 350 Fed. Cir. 793. In the
18 Mercedes case, counsel indicates that there's really scant
19 evidence that his client is a danger to the community -- and
20 both of these cases speak to the presumption, first of all,
21 and the danger to the community.

22 In the Mercedes case, the defendants were charged with
23 conspiracy to commit armed robbery. The District Court
24 released the defendants on bail pending trial, the
25 Government appealed, and the 2nd Circuit reversed the

1 release order finding that the defendant had failed to rebut
2 the presumption of dangerousness and risk of flight.

3 And I am citing this case for a few reasons. First
4 off, really what your consideration is in this case is
5 two-fold, has Mr. Eberle rebutted the presumption in favor
6 of detention. If you find that he has not rebutted the
7 presumption if favor of detention, then there's really no
8 reason for you to go further and you should order that he be
9 detained. If you find that he has rebutted the presumption,
10 then you're obligated under the Bail Reform Act to go
11 further and consider the four factors that counsel and I
12 have both addressed to you already.

13 And only if you find that a consideration of those
14 factors, while still considering that the presumption
15 exists, only if you find that a consideration of those four
16 factors calls for the Defendant's release, should you then
17 issue a release order.

18 In this case what you essentially have is a Defendant
19 not rebutting the presumption because Mr. Eberle has, quite
20 frankly, provided no evidence to rebut the presumption.
21 He's come forward and said that his mother is willing to be
22 his third-party custodian and that there are release
23 conditions that can be implemented in this case sufficient
24 to remove the presumption.

25 I would submit to you that based on the cases that I

1 provided to you, that is not enough to rebut the
2 presumption. You have to come forward with some evidence
3 about your personal background that rebuts the presumption.
4 Release conditions in and of themselves cannot and should
5 not be enough because otherwise if release conditions by
6 themselves were enough, then there would be no need for a
7 presumption. The presumption would be rebutted in
8 99.9 percent of cases because in almost every case there's a
9 presumption -- or there are release conditions that can be
10 fashioned. Therefore, if the release conditions in and of
11 themselves were enough to rebut the presumption, there would
12 be no reason to have a presumption because it would
13 continually and in every case be rebutted.

14 In the case the presumption is not rebutted because the
15 release conditions that are fashioned by Pretrial Services
16 in this case -- well, first of all, Pretrial Services does
17 not recommend release in this case. So there is no
18 recommendation from Pretrial Services that Mr. Eberle be
19 released. Secondly, any release conditions that you would
20 fashion would not be sufficient to ensure you that
21 Mr. Eberle would not be a danger to the community.

22 Specifically, in Mercedes, the Court held that's
23 expressly referenced in several cases where a bail package
24 might reasonably assure the appearance of the defendant at
25 trial, those -- that bail package will not reasonably assure

1 the safety of the community. And they reference a variety
2 of different cases.

3 One of the cases being a case where the defendant is
4 charged with Rico-type violations, conspiracy to commit
5 loansharking, illegal weapons possession, and similar-type
6 offenses, the release conditions placed upon those
7 defendants were not enough to ensure that the defendants
8 would not be a danger to the community simply because of the
9 nature of the charges against the defendant -- those
10 defendants and because the release conditions were simply
11 put into place to ensure that the defendant would appear for
12 trial, not to ensure that the defendant would not be a
13 danger to the community.

14 And in this case, if you were to fashion release
15 conditions along the lines of electronic monitoring and home
16 detention, first of all, Mr. Eberle would live in Corry,
17 which even if you were to assume that a Pretrial Services'
18 officer in Erie would respond to any violation, would take
19 along the lines of a half hour to 45 minutes to respond to
20 the allegation. If it would be a Pretrial Services' officer
21 in Pittsburgh, what assurance do you have that -- and this
22 is no fault of Pretrial Services, but any violation of
23 electronic monitoring would not be responded to for a
24 lengthy period of time by Pretrial Services simply because
25 of the distance that would need to be covered.

1 Secondly, home detention or electronic monitoring would
2 not prevent Mr. Eberle from having contact with any child
3 that might come into his home. And I haven't heard anything
4 that would indicate that the Eberles can guarantee that at
5 no point in time would Mr. Eberle ever have contact with
6 children.

7 Third, Mr. Eberle is going to be in a home with a
8 computer with Internet access. And you're asked to not
9 detain him because the person who has the computer
10 apparently is offering assurances that the door to his room
11 will constantly be locked. I would submit to you that you
12 just have not heard enough in this case to rebut the
13 presumption. And the fact that your mother is willing to be
14 a third-party custodian does not rebut the presumption in a
15 case like this. Otherwise, there would be no reason to have
16 a presumption.

17 Additionally, Your Honor, with regard to the Mercedes
18 case, the Court takes note of the fact that one of the
19 defendants in the Mercedes case references that he had no
20 crimes of violence in his past or he really had no prior
21 record which would cause the Court to consider him a danger
22 to the community. And the Court explicitly finds that a
23 history of domestic violence is enough for the Court to
24 conclude that the defendant is a danger to the community.
25 And I related to the Court that the OCY Court Summary in

1 this case revealed that the Corry Police were called to
2 Mr. Eberle's residence 67 times for reports of domestic
3 violence.

4 And the Court in Mercedes specifically writes, "A
5 willingness to strike loved ones offers probative evidence
6 of the tendency to violence and dangerousness towards
7 others." With regard to the other case from the 8th
8 Circuit, I cite to that primarily because it's a sexual
9 assault-type case involving a child victim. And the Court
10 notes that, "Although the defendant had no prior criminal
11 history, the nature of the crime charged, which would be
12 sexual activity with a minor, weighs heavily against
13 release."

14 And in that case the Court found that even though the
15 defendant's parents were willing to put up \$65,000 of an
16 equity interest in their home and do a number of other
17 things along the lines of home confinement and electronic
18 monitoring, as well as be third-party custodian, that the
19 release order in that case was reversed by the 8th Circuit.

20 So what you have in this case is essentially, Your
21 Honor, a situation where Mr. Eberle has provided no evidence
22 which rebuts the presumption. And if you were to find that
23 the presumption was rebutted, what essentially that means is
24 that really there should be no presumption because even on
25 the barest of evidence you could rebut the presumption.

1 Having not rebutted the presumption, Mr. Eberle should be
2 detained, and he should be detained especially in light of
3 the charges against him.

4 Now, with regard to the Government, Counsel made
5 comment that the weight of the evidence based on my proffer
6 just is not there. This is a case where a victim has come
7 forward. A victim has said those pictures are of me, those
8 pictures were taken of me when I was 12. Mr. Eberle admits
9 that those pictures, which the victim says are her, were on
10 his Yahoo e-mail. Beyond that, pictures of child
11 pornography were found on the Eberle's computer.

12 Mr. Eberle, again, admits that the pictures of the 12 year
13 old, who came forward, were pictures that were on his
14 computer.

15 MR. PATTON: He did not admit that they were pictures
16 of a 12 year old.

17 MR. TRABOLD: I mean, Mr. Eberle admits that those
18 pictures that the victim says were of her are on his
19 computer. He disputes that they were of her.

20 This is not a case where the evidence is weak, Your
21 Honor. This is a case where the victim came forward,
22 albeit, three years later. The pictures are what the
23 pictures are, they were on Mr. Eberle's computer.

24 What you're essentially being asked to do is to release
25 this Defendant on conditions when -- this is the picture

1 that you're left with of Mr. Eberle: He has essentially no
2 work history, he has been unable to maintain a residence, he
3 has mental illness, he's unable to comply with the
4 requirements of OCY with regard to his children. What is
5 there about the nature and circumstances of his background
6 that should cause you to release him to the community,
7 especially in light of the charges and in light of the
8 allegations and evidence against him?

9 I'm struggling to find something that you can pinpoint
10 in the record before you that should give you confidence to
11 release him. Now, Counsel says that mental illness in and
12 of itself isn't enough for you to detain somebody. Well, it
13 was enough for Pretrial Services to recommend that
14 Mr. Eberle -- to factor into the equation in recommending
15 for detention. And that's in all you have before you in
16 this case.

17 Counsel also says, well, really the fact that he
18 couldn't comply with OCY is apples and oranges in this case
19 because OCY didn't have the authority to punish him. Well,
20 I would ask you to consider, if you can't comply with
21 dictates placed upon you which are designed to benefit your
22 children and your relationship with your children, then what
23 confidence do you have that he's going to comply with what
24 you want him to do. If you can't comply with dictates
25 placed upon you related to your children, which should be

1 the most important thing in your life, then it's absolutely
2 fanciful for Counsel to argue to you that all of a sudden
3 even though Mr. Eberle couldn't comply under those, that all
4 of a sudden now because you have the ability to punish, he's
5 going to do what you tell him to do.

6 There's nothing -- in short, Your Honor, there's
7 nothing in this record that should give you any confidence
8 that Mr. Eberle is not a danger to the community. There's
9 just nothing there. He hasn't rebutted the presumption.
10 And it simply can't be enough to come into court and offer a
11 proffer that my mother will be the third-party custodian and
12 take care of me. That just can't be enough, because if it
13 is, then there should be no presumption.

14 THE COURT: Thank you.

15 MR. PATTON: On the issue of rebutting the presumption,
16 I would that submit that Mr. Trabold is absolutely, legally
17 incorrect when he says that presenting evidence of the
18 conditions of bond that can be imposed cannot be used to
19 rebut the presumption. That's just legally not true. The
20 presumption is not intended to be a high burden to overcome
21 and it can be overcome based on the facts that are contained
22 in the Pretrial Services' report. And that -- so it's just
23 incorrect that you cannot use that type of information to
24 rebut the presumption.

25 And to indicate the area in which -- in the Western

1 District of Pennsylvania in which you live should impact
2 whether or not you should be released on bond, I would just
3 submit it's just grossly inappropriate. You're actually,
4 legally discriminating against someone based on the fact
5 that they live in Corry rather than living in Erie or living
6 in Pittsburgh.

7 MR. TRABOLD: Well, Judge, you're not legally
8 discriminating against anybody. The question you have is:
9 Is Mr. Eberle a danger to the community? And where he lives
10 in the community is relevant to your consideration because
11 it's relevant to how long it will take for someone to
12 respond should he not do what he's supposed to do.

13 Mr. Eberle doesn't live two blocks away from the
14 Pretrial Services' office in Pittsburgh, that's just the
15 fact of the matter. And it's not legal discrimination
16 against him for you to consider how long it's going to take
17 for a law enforcement officer to respond to any violation
18 that Mr. Eberle commits because Mr. Eberle is charged with
19 offenses against children. Mr. Eberle -- therefore, you
20 should consider how long it's going to take for the
21 community to be protecting should Mr. Eberle walk away from
22 his electronic monitoring.

23 Beyond that, Your Honor, it is not incorrect to say
24 that the Defendant has to come forward with some evidence to
25 rebut the presumption and that release conditions in and of

1 themselves are not some evidence that Mr. Eberle's coming
2 forward with. That's not -- coming forward with some
3 evidence that tells the Court, I'm not a danger to the
4 community because of my personal background, not because the
5 Court can place electronic monitoring on me, you can do that
6 in every case.

7 THE COURT: I'm going to read these cases and I'm going
8 to look at proffers made by both sides. And I will make my
9 decision before the end of the day.

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11 (Hearing concluded at 3:33 p.m.)
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